

REFERENCE TITLE: **Landlords; tenants; foreclosures**

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

## **HB 2269**

Introduced by  
Representative Crump

### AN ACT

AMENDING SECTIONS 33-809 AND 33-1321, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 10, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1331; RELATING TO LANDLORDS AND TENANTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2       Section 1. Section 33-809, Arizona Revised Statutes, is amended to  
3 read:

33-809. Request for copies of notice of sale; mailing by trustee; disclosure of information regarding trustee sale

7       A. A person desiring a copy of a notice of sale under a trust deed, at  
8 any time subsequent to the recording of the trust deed and prior to the  
9 recording of a notice of sale pursuant thereto, shall record in the office of  
10 the county recorder in any county in which part of the trust property is  
11 situated a duly acknowledged request for a copy of any such notice of  
12 sale. The request shall set forth the name and address of the person or  
13 persons requesting a copy of such notice and shall identify the trust deed by  
14 setting forth the county, docket or book and page of the recording data  
15 thereof and by stating the names of the original parties to such deed, the  
16 date the deed was recorded and the legal description of the entire trust  
17 property and shall be in substantially the following form:

## Request for Notice

Request is hereby made that a copy of any notice of sale under the trust deed recorded in docket or book \_\_\_\_\_ at page \_\_\_\_\_, records of \_\_\_\_\_ county, Arizona,

,  
(legal description of trust property)

Executed by \_\_\_\_\_ as trustor, in which  
\_\_\_\_\_ is named as beneficiary and \_\_\_\_\_  
as trustee, be mailed to \_\_\_\_\_ at  
\_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**Signature**

#### (Acknowledgement)

32           B. Not later than thirty days after recording the notice of sale, the  
33 trustee shall mail by certified or registered mail, with postage prepaid, a  
34 copy of the notice of sale that reflects the recording date together with any  
35 notice required to be given by subsection C of this section, addressed as  
36 follows:

37           1. To each person whose name and address are set forth in a request  
38 for notice, which has been recorded prior to the recording of the notice of  
39 sale, directed to the address designated in such request.

40           2. To each person who, at the time of recording of the notice of sale,  
41 appears on the records of the county recorder in the county in which any part  
42 of the trust property is situated to have an interest in any of the trust  
43 property. The copy of the notice sent pursuant to this paragraph shall be  
44 addressed to the person whose interest appears of record at the address set  
45 forth in the document. If no address for the person is set forth in the

1 document, the copy of the notice may be addressed in care of the person to  
2 whom the recorded document evidencing such interest was directed to be mailed  
3 at the time of its recording or to any other address of the person known or  
4 ascertained by the trustee. If the interest that appears on the records of  
5 the county recorder is a deed of trust, a copy of the notice only needs to be  
6 mailed to the beneficiary under the deed of trust. If any person having an  
7 interest of record or the trustor, or any person who has recorded a request  
8 for notice, desires to change the address to which notice shall be mailed,  
9 the change shall be accomplished by a request as provided under this section.

10 3. FOR RESIDENTIAL PROPERTIES ONLY, TO AN OCCUPANT IN POSSESSION OF  
11 THE PROPERTY AT THE TIME OF RECORDING OF THE NOTICE OF SALE. THE COPY OF THE  
12 NOTICE SENT PURSUANT TO THIS PARAGRAPH SHALL CONTAIN THE NAME AND ADDRESS OF  
13 THE MORTGAGOR THAT HOLDS THE MORTGAGE, OR THE NAME AND ADDRESS OF AN ATTORNEY  
14 FOR THAT MORTGAGOR, AND SHALL BE ADDRESSED TO THE OCCUPANTS BY NAME, IF  
15 KNOWN, AT THE PROPERTY ADDRESS, OR SHALL BE SERVED OTHERWISE ON ANY RENTAL  
16 OCCUPANT. THE NOTICE SHALL INCLUDE IN BOLDFACE TYPE NO SMALLER THAN THE  
17 REMAINDER OF THE DOCUMENT A STATEMENT IN SUBSTANTIALLY THE FOLLOWING FORM:

18 RESIDENTIAL TENANTS OCCUPYING THIS PROPERTY: BE ADVISED THAT  
19 THIS PROPERTY IS IN THE PROCESS OF BEING FORECLOSED DUE TO  
20 MORTGAGE NONPAYMENT. IF YOU ARE A TENANT RESIDING HERE UNDER A  
21 WRITTEN RENTAL AGREEMENT, YOU HAVE CERTAIN RIGHTS IN ACCORDANCE  
22 WITH THE ARIZONA RESIDENTIAL LANDLORD AND TENANT ACT AT ARIZONA  
23 REVISED STATUTES SECTIONS 33-1301 THROUGH 33-1381. THESE MAY  
24 INCLUDE THE RIGHT TO: TERMINATE YOUR RENTAL AGREEMENT, CONTINUE  
25 RESIDING IN THE PREMISES, RECOVER YOUR PREPAID RENTS AND PREPAID  
26 DEPOSITS OR MAKE A BONA FIDE OFFER TO PURCHASE THE PROPERTY AT  
27 THE TRUSTEE SALE. TO PRESERVE THESE AND OTHER RIGHTS, YOU  
28 SHOULD IMMEDIATELY PROVIDE THIS INFORMATION BY CERTIFIED,  
29 REGISTERED OR EXPRESS MAIL, OR HAND DELIVERY, TO THE LENDER OR  
30 LENDER'S ATTORNEY LISTED ON THIS DOCUMENT: NOTICE TO THE LENDER  
31 THAT YOU ARE A TENANT OCCUPYING THE PREMISES, AND A COPY OF YOUR  
32 WRITTEN RENTAL AGREEMENT, INCLUDING ANY RENT-TO-OWN OR LEASE  
33 PURCHASE AGREEMENT.

34 C. The trustee, within five business days after the recordation of a  
35 notice of sale, shall mail by certified or registered mail, with postage  
36 prepaid, a copy of the notice of sale to each of the persons who were parties  
37 to the trust deed except the trustee. The copy of the notice mailed to the  
38 parties need not show the recording date of the notice. The notice sent  
39 pursuant to this subsection shall be addressed to the mailing address  
40 specified in the trust deed. In addition, notice to each party shall contain  
41 a statement that a breach or nonperformance of the trust deed or the contract  
42 or contracts secured by the trust deed, or both, has occurred, and setting  
43 forth the nature of such breach or nonperformance and of the beneficiary's  
44 election to sell or cause to be sold the trust property under the trust deed  
45 and the additional notice shall be signed by the beneficiary or the

1 beneficiary's agent. A copy of the additional notice shall also be sent with  
2 the notice provided for in subsection B, paragraph 2 of this section to all  
3 persons whose interest in the trust property is subordinate in priority to  
4 that of the deed of trust along with a written statement that the interest  
5 may be subject to being terminated by the trustee's sale. The written  
6 statement may be contained in the statement of breach or nonperformance.

7 D. No request for a copy of a notice recorded pursuant to this  
8 section, nor any statement or allegation in any request, nor any record of  
9 request, shall affect the title to the trust property or be deemed notice to  
10 any person that a person requesting a copy of notice of sale has or claims  
11 any interest in, or claim upon, the trust property.

12 E. At any time that the trust deed is subject to reinstatement  
13 pursuant to section 33-813, but not sooner than thirty days after recordation  
14 of the notice of trustee's sale, the trustee shall upon receipt of a written  
15 request, provide, if actually known to the trustee, the following information  
16 relating to the trustee's sale and the trust property:

17 1. The unpaid principal balance of the note or other obligation which  
18 is secured by the deed of trust.

19 2. The name and address of record of the owner of the trust property  
20 as of the date of recordation of the notice of trustee's sale.

21 3. A list of the liens and encumbrances upon the trust property as of  
22 the date of recordation of the notice of trustee's sale, excluding those  
23 matters set forth in section 33-438, subsection A.

24 If the trustee elects to charge a fee for providing the information  
25 requested, the fee shall not exceed five per cent of the amount the trustee  
26 may charge pursuant to section 33-813, subsection B, paragraph 4, except that  
27 the trustee shall not charge a fee that is more than one hundred dollars or  
28 be required to accept a fee that is less than thirty dollars but may accept a  
29 lesser fee at the trustee's discretion. The trustee, or any other person  
30 furnishing information pursuant to this subsection to the trustee, shall not  
31 be subject to liability for any error or omission in providing the  
32 information requested, except for the wilful and intentional failure to  
33 provide information in the trustee's actual possession.

34 F. Beginning at 9:00 a.m. and continuing until 5:00 p.m. mountain  
35 standard time on the last business day preceding the day of sale and  
36 beginning at 9:00 a.m. mountain standard time and continuing until the time  
37 of sale on the day of the sale, the trustee shall make available the actual  
38 bid or a good faith estimate of the credit bid the beneficiary is entitled to  
39 make at the sale. If the actual bid or good faith estimate is not available  
40 during the prescribed time period, the trustee shall postpone the sale until  
41 the trustee is able to comply with this subsection.

42 G. In providing information pursuant to subsections E and F of this  
43 section, the trustee, without obligation or liability for the accuracy or  
44 completeness of the information, may respond to oral requests, respond orally  
45 or in writing or provide additional information not required by such

1 subsections. With respect to property that is the subject of a trustee's  
2 sale, the beneficiary of such deed of trust or the holder of any prior lien  
3 may, but shall not be required to, provide information concerning such deed  
4 of trust or any prior lien that is not required by subsection E or F of this  
5 section and may charge a reasonable fee for providing the information. The  
6 providing of such information by any beneficiary or holder of a prior lien  
7 shall be without obligation or liability for the accuracy or completeness of  
8 the information.

9 Sec. 2. Section 33-1321, Arizona Revised Statutes, is amended to read:

10 **33-1321. Security deposits**

11 A. A landlord shall not demand or receive security, however  
12 denominated, including, but not limited to, prepaid rent in an amount or  
13 value in excess of one and one-half month's rent. This subsection does not  
14 prohibit a tenant from voluntarily paying more than one and one-half month's  
15 rent in advance.

16 B. The purpose of all nonrefundable fees or deposits shall be stated  
17 in writing by the landlord. Any fee or deposit not designated as  
18 nonrefundable shall be refundable.

19 C. With respect to tenants who first occupy the premises or enter into  
20 a new written rental agreement after January 1, 1996, upon move in a landlord  
21 shall furnish the tenant with a signed copy of the lease, a move-in form for  
22 specifying any existing damages to the dwelling unit and written notification  
23 to the tenant that the tenant may be present at the move-out  
24 inspection. Upon request by the tenant, the landlord shall notify the tenant  
25 when the landlord's move-out inspection will occur. If the tenant is being  
26 evicted for a material and irreparable breach and the landlord has reasonable  
27 cause to fear violence or intimidation on the part of the tenant, the  
28 landlord has no obligation to conduct a joint move-out inspection with the  
29 tenant.

30 D. Upon termination of the tenancy, property or money held by the  
31 landlord as prepaid rent and security may be applied to the payment of all  
32 rent, and subject to a landlord's duty to mitigate, all charges as specified  
33 in the signed lease agreement, or as provided in this chapter, including the  
34 amount of damages which the landlord has suffered by reason of the tenant's  
35 noncompliance with section 33-1341. Within fourteen days, excluding  
36 Saturdays, Sundays or other legal holidays, after termination of the tenancy  
37 and delivery of possession and demand by the tenant the landlord shall  
38 provide the tenant an itemized list of all deductions together with the  
39 amount due and payable to the tenant, if any. Unless other arrangements are  
40 made in writing by the tenant, the landlord shall mail the itemized list and  
41 any amount due, by first class mail, to the tenant's last known place of  
42 residence.

43       **E. ON CONVEYANCE OF TITLE TO THE RENTAL PROPERTY BY WAY OF**  
44       **FORECLOSURE, THE TENANCY IS DEEMED TERMINATED, POSSESSION OF THE RENTAL**  
45       **PROPERTY IS DEEMED DELIVERED TO THE FORMER OWNER AND THE TENANT IS DEEMED TO**

1 HAVE DEMANDED RETURN OF ANY PROPERTY OR MONEY HELD BY THE LANDLORD AS PREPAID  
2 RENT AND SECURITY. ON RECEIVING NOTICE OF FORECLOSURE, THE TENANT MAY DIRECT  
3 THE LANDLORD TO APPLY PREPAID RENT AND SECURITY TO THE TENANT'S RENTAL  
4 OBLIGATION AND IF THE TENANT SO DIRECTS, THE TENANT IS IN COMPLIANCE WITH THE  
5 TENANT'S RENTAL PAYMENT OBLIGATION FOR ONE MONTH'S RENT OR IF THE AMOUNTS  
6 HELD CONSTITUTE MORE THAN ONE MONTH'S RENT, THE TENANT'S RENTAL PAYMENT  
7 OBLIGATION IS PROPORTIONATELY REDUCED.

8 ~~E.~~ F. If the landlord fails to comply with subsection D of this  
9 section the tenant may recover the property and money due the tenant together  
10 with damages in an amount equal to twice the amount wrongfully withheld.

11 ~~F.~~ G. This section does not preclude the landlord or tenant from  
12 recovering other damages to which the landlord or tenant may be entitled  
13 under this chapter.

14 ~~G.~~ H. During the term of tenancy the landlord may use refundable  
15 security deposits or other refundable deposits in accordance with any  
16 applicable provisions of the property management agreement. At the end of  
17 tenancy, all refundable deposits shall be refunded to the tenant pursuant to  
18 this section.

19 ~~H.~~ I. The holder of the landlord's interest in the premises at the  
20 time of the termination of the tenancy is bound by this section.

21 Sec. 3. Title 33, chapter 10, article 2, Arizona Revised Statutes, is  
22 amended by adding section 33-1331, to read:

23 33-1331. Lease purchases; bond required

24 A LANDLORD OR SELLER WHO ENTERS INTO A LEASE PURCHASE AGREEMENT OR  
25 OTHER FORM OF RENTAL TO OWNERSHIP CONVERSION WITH A TENANT OR BUYER, HOWEVER  
26 DENOMINATED, SHALL PROVIDE A BOND OR ESCROW ACCOUNT OR OTHER SIMILAR FORM OF  
27 FINANCIAL GUARANTY TO SECURE THE AMOUNT OF MONEY PAID BY THE TENANT OR BUYER  
28 THAT REPRESENTS PREPAID RENT AND OTHER SECURITY, WHICH SHALL BE RETURNED TO  
29 THE TENANT OR BUYER AT THE TIME OF TERMINATION OF THE TENANCY BY FORECLOSURE  
30 ACTION OR OTHERWISE.